

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

TOBIE KING, et al., ¹	:	APPEAL NO. C-070812
		TRIAL NOS. A-0607593
Plaintiffs-Appellants,	:	A-0610013
vs.	:	<i>JUDGMENT ENTRY.</i>
BOARD OF TRUSTEES OF	:	
BETHLEHEM BAPTIST CHURCH ²	:	
	:	
and	:	
	:	
BETHLEHEM BAPTIST CHURCH,	:	
INC.,	:	
Defendants-Appellees.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.³

Plaintiffs-appellants, alleged members of defendant-appellee Bethlehem Baptist Church, Inc., (“the church”), appeal the trial court’s judgment dismissing for lack of standing their claims against the church, the church’s board of trustees (“the

¹ The following are also plaintiffs: Frankie Bowers, Nicole Bowers, Danny Cavins, Deborah Chalk, Cornelia F. Childs, Thomas Childs, Sr., Nancy Colvard, Jerron Davis, Ronald Harris, Anthony Henry, Christian Hill, Duncan K. Hill, Fred A. Hill, A.H. Johnson, Ariel R. Johnson, Gail F. Johnson, Beverly Jones, Georgia Marshall, Carolyn Mayfield, Melvin Mayfield, Willa McDade, Eddie Mitchell, Lizelle A. Simmons, Rose M. Spradley, Hattie Stephens, Fred Suggs, Jr., Chester Walker, Dorothy Ward, Pearl Williams, Shirley Cheatham, individually and as guardian for Aleese Cheatham, Antonio Cheatham, David Cheatham, Lee Cheatham, La’Kayla Cheatham, Erich Cheatham, and Karin Sims, individually and next of friend to Shamier Sims, Keir Sims, Zaire Sims, Tiare Sims, and Breir Sims.

² Each of the following trustees was sued individually and in his or her official capacity: Deborah Edwards, Roy Fincher, Billy J. Flakes, Ruby L. Moody, Vernon Pilgram, Sr., Sylvester Randolph, Mary Turner, and Charles Williams.

³ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

board”), and the church’s treasurer. For the following reasons, we reverse the trial court’s judgment and remand this case to the trial court to determine whether the proper church authority revoked the plaintiffs-appellants’ membership in the church.

At the time that this action was commenced, the plaintiffs-appellants, Tobie King and 44 other individuals (collectively, “the dissident members”) were members of the church. In 2006, the board terminated the employment of the church’s pastor and sought an injunction to prevent the pastor from removing any property from the church and from leading worship services. King, a supporter of the pastor and a deacon of the church, individually sued the board for breach of its fiduciary duties, alleging that the board had removed the pastor in violation of the church’s constitution and bylaws, and that it had indebted the church through contracts entered into without proper authorization from the congregation. The board’s case was then consolidated with King’s case. During the discovery process, some church accounting records were produced, which caused King to amend his complaint to add 19 plaintiffs.

In February 2007, the trial court ruled that “the congregation of the [church had] duly granted and delegated to the Joint Board of [the church] the authority to terminate the employment of the [pastor] for violations to the Pastoral Agreement.” The court also ruled that the “the congregation of the [church had] voted to remove the Trustees [of the board].” Following this entry, the congregation of the church voted to reinstate the same members of the board. After this, the dissident members amended their complaint a second time to add 24 more plaintiffs and to add the church, the corporate entity, as a defendant. The crux of the complaint was that the

board and the church's treasurer had used the church's money for unauthorized transactions and had failed to disclose these transactions, resulting in a breach of their fiduciary duties to the members of the church. In their complaint, the dissident members sought, among other things, damages, an accounting, and a division of church assets "between the two factions."

The board moved to dismiss the dissident members' complaint, arguing that they no longer had standing to assert their claims because the church had revoked their membership "in accordance with authorized policies and procedures." The board argued in its motion that by filing the second amended complaint, the dissident members had made clear that they were not interested in the reunification of the church. The board indicated that the church had terminated their membership because of disruptive behavior during worship services and membership meetings, and for continuing "unchristian conduct."

Attached to the board's motion to dismiss were unauthenticated documents, including (1) the letter by the board to the dissident members informing them that their memberships were going to be terminated; (2) the dissident members' written response requesting a hearing before the congregation on the issue; (3) the board's letter to the dissident members setting forth dates and times for the hearings; (4) the board's notes from each hearing; and (5) the church records reflecting an alleged majority vote of the congregation terminating the membership of each dissident member.

In response, the dissident members argued that the letters from the board were not proper and that the hearings were not properly conducted in accordance

with the church's bylaws. Consequently, the dissident members maintained that they were still members of the church and had standing to sue the board.

A copy of the church's constitution and bylaws are in the record. Article 1, Section 4 of the bylaws provides that the church "may terminate membership should a member become an offense to the Church because of immoral or unchristian conduct. * * * Written notice shall be delivered to the offending member within sixty (60) days of the breach, and upon receipt the offender shall receive an additional thirty (30) days in which to respond. Termination shall be made effective only after due notice and a formal hearing. * * * Deacons shall make recommendations for termination to the congregation, to be seconded from the floor. A recommendation to terminate a member must receive a majority vote."

When the trial court granted the board's motion to dismiss, it stated that "the Church may have taken some action to terminate the membership of the plaintiffs." Accordingly, the trial court ruled that the dissident members no longer had standing to maintain their lawsuit. Further, the court noted that the question of who was a member of a church was an ecclesiastical matter "over which the Court has no jurisdiction."

In their single assignment of error, the dissident members now contend that the trial court erred by dismissing their complaint for lack of standing.

In their response to the motion to dismiss for lack of standing, the dissident members argued that if their membership had been revoked, it was done wrongfully. Unfortunately, this did not matter.

In *Howard v. Covenant Apostolic Church*,⁴ we held that a trial court lacked subject-matter jurisdiction to determine whether a churchgoer's membership had been wrongfully terminated.⁵ We said that "even congregational (as opposed to hierarchical) churches are free from secular court scrutiny of their internal practices and discipline regarding the membership of the congregation."⁶ But then we noted that courts do retain jurisdiction in cases involving congregational churches to determine whether the *proper authority* made the decision about church discipline or policy.⁷

Here, the dissident members argued, albeit vaguely, that the church had not followed its own bylaws and constitution when it allegedly revoked their membership. But we noted in *Howard* that a trial court may not inquire into whether the congregational church followed its own bylaws and constitution in terminating a membership: "so long as the appropriate church authority has made the decision [to terminate a membership], the issue of whether the church followed its internal procedures is a matter of church governance and discipline into which a secular court is prohibited from inquiring."⁸ Accordingly, the court below was limited in this case to determining whether the proper church authority had terminated the dissident members' membership.

Upon review of the record, we conclude that the trial court never determined whether the proper church authority had terminated the dissident members'

⁴ (1997), 124 Ohio App.3d 24, 705 N.E.2d 385

⁵ Id. at 28.

⁶ Id., citing *First Baptist Church of Glen Este v. State* (S.D. Ohio 1983), 591 F.Supp. 676, and *Alexander v. Shiloh Baptist Church* (1991), 62 Ohio Misc.2d 79, 592 N.E.2d 918.

⁷ Id., citing *Tibbs v. Kendrick* (1994), 93 Ohio App.3d 35, 637 N.E.2d 397, and *First Baptist Church of Glen Este*, supra, at 683; see, also, *Salzgaber v. First Christian Church* (1989), 65 Ohio App.3d 368, 583 N.E.2d 1361.

⁸ Id., citing *Lewis v. Seventh Day Adventists Lake Region Conference* (C.A.6, 1992), 978 F.2d 940; *Tibbs*, supra; cf. *Randolph v. First Baptist Church of Lockland* (1954), 53 O.O. 288, 120 N.E.2d 485.

membership. Accordingly, we are constrained to reverse the judgment of the trial court and remand this case for the court to make that determination.

Once that determination has been made, the trial court may then properly consider the board's motion to dismiss. In deciding whether to grant the board's motion, we instruct the trial court to state on the record under what civil rule it is considering the motion.⁹

The dissident members raise other arguments that we do not address here as they are not ripe for review.

Accordingly, we sustain the dissident members' assignment of error and reverse the judgment of the trial court. We remand this case to the trial court to determine whether the proper church authority had revoked the dissident members' church membership and, in light of that determination, consider the board's motion to dismiss.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 29, 2008
per order of the Court _____.
Presiding Judge

⁹ We note that if we had been able to address the decision of the trial court to grant the motion, we would not have known what standard of review to apply as the trial court did not indicate under what civil rule it was considering the board's motion.